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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/978,109

10/15/2001

Takaki Arai

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02/23/2005

EXAMINER

SIEFKE, SAMUEL P

REED SMITH, LLP

ATTN: PATENT RECORDS DEPARTMENT

599 LEXINGTON AVENUE, 29TH FLOOR

NEW YORK, NY 10022-7650

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/978,109	<b>Applicant(s)</b> ARAI ET AL.	
	<b>Examiner</b> Samuel P Siefke	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1,3-5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaginuma et al. (USPN 5,008,078).

Yaginuma discloses an integral multi-layer analysis for the determination of ammonia or an ammonia-producing substance comprising a transparent support (col. 3, lines 11-12), an indicator layer containing an indicator which produces a detectable change by gaseous ammonia (col. 3, lines 13-15), a liquid blocking layer (polypropylene, polyethylene) permitting a gaseous ammonia to pass there through (col.

3, lines 16-17; col. 6, lines 1-64; col. 8, lines 57-65), a reagent layer containing an alkaline buffering agent and optionally a reagent capable of reacting with said ammonia-producing substance to produce ammonia (col. 3, lines 18-20), and a spreading layer (col. 32), adhesively laminated in this order (col. 3, lines 8-10). The air barrier layer thickness can range from 30  $\mu\text{m}$  to about 300  $\mu\text{m}$  (col. 6, lines 37-41). The pore size of the air barrier layer ranges from 0.01  $\mu\text{m}$  to 20  $\mu\text{m}$  (col. 6, lines 44-47).

Yaginuma does not teach the improvement which comprises that the liquid blocking layer is composed of at least two porous membrane layers.

Yaginuma states that there is a danger that liquids, especially liquid with contain interfering substances such as alkaline materials in solution, will pass through the barrier layer as a result of a capillary action within the voids in the case of air barrier layers made of porous materials. Then goes onto say that the barrier is treated with a hydrophobic or water repellent to the extent that capillary flow due to the above mentioned capillary action does not occur (col. 7, lines 56-68). It would have been obvious to one having an ordinary skill in the art to modify the multi-layer analysis of Yaginuma to incorporate another air barrier layer to add an extra level of protection against allowing a liquid to migrate through to the indicator layer and render the multi-layer useless.

### ***Response to Arguments***

Applicant's arguments filed 11/18/04 have been fully considered but they are not persuasive. Applicant argues, "Yaginuma does not teach that the liquid blocking layer

of the present invention is composed of at least two porous membrane. Further, Yahinuma does not teach that the top membrane that contacts the reagent layer has pores with a diameter that is equal or smaller than the just underlying member.” The Examiner would like to point out that claim 1 of the instant application only requires that there be two impermeable porous membranes and the layers have a pore size with a diameter that is equal than just the underlying member, in short, two of the same membranes. The modified Yaginuma teaches just this embodiment because it would have been obvious to one of ordinary skill to double an impermeable porous membrane to add an extra level of protection against allowing a liquid to migrate through to the indicator layer and render the multi-layer useless. See (duplication of parts) In re Harza, 124 U.S.P.Q. 378.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



February 21, 2005

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700